Supreme Court, U.S.
FILED
JUL 11 2001
OFFICE OF THE CLERK

No. 00-1571

In the Supreme Court of the United States

LINDA K. WALKER, PETITIONER

v.

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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11 pp

QUESTION PRESENTED

The Social Security Act precludes the award of Social Security disability benefits when alcoholism or drug addiction is a contributing factor material to the determination that the claimant is disabled. 42 U.S.C. 423(d)(2)(C), 1382c(a)(3)(J) (Supp. V 1999). The question in this case is whether the Social Security Administration properly denied petitioner Social Security disability benefits after finding that petitioner's abuse of prescription drugs, which required methadone treatment, was a contributing factor material to the determination that she is disabled.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. No. A-4) is unpublished, but the decision is noted at 234 F.3d 34 (Table).[1] The opinion of the district court (Pet. App. No. A-3) is unreported. The opinions of the Administrative Law Judge (Pet. App. No. A-1) and the Appeals Council (Pet. App. No. A-2) are also unreported.

[1] The pages marking Appendices Nos. A-3 and A-4 appear to have been omitted inadvertently from the petition appendix. In addition, the pages of Pet. App. No. A-3 are not numbered. We count the first page of the Memorandum Opinion in that appendix as page 1.

JURISDICTION

The judgment of the court of appeals (Pet. App. No. A-4) was entered on September 15, 2000. A petition for rehearing was denied on December 8, 2000 (Pet. App. No. A-5). The petition for a writ of certiorari was filed on March 8, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(l).

STATEMENT

1. The federal government provides benefits to disabled persons under programs administered by the Social Security Administration (SSA). The Social Security Disability Insurance (SSDI) program established by Title II of the Social Security Act provides for the payment of such benefits to the disabled widow of an insured individual. 42 U.S.C. 402(e)(4). Title XVI of the Social Security Act, Pub.L. No. 92-603, 86 Stat. 1465 (42 U.S.C. 1381 *et seq.*), establishes the Supplemental Security Income (SSI) program, which extends benefits to indigent disabled persons. Both titles define "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. 423(d)(1)(A); 42 U.S.C. 1382c(a)(3)(A) (1994 & Supp. V 1999).

In 1996, Congress amended the Social Security Act to preclude the award of SSDI and SSI benefits when alcoholism or drug addiction materially contributes to the claimed disability. The 1996 amendments provide: "[A]n individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination

that the individual is disabled." Contract With America Advancement Act of 1996, Pub. L. No. 104-121, § 105(b)(1), 110 Stat. 853 (42 U.S.C. 423(d)(2)(C), 1382c(a)(3)(J) (Supp. V 1999)).

2. In 1994, petitioner filed a claim for SSDI and SSI benefits, alleging a disability beginning on January 1, 1988.[2] Pet. App. No. A-1, at 1; Pet. App. No. A-3, at 1. After SSA denied petitioner's application, petitioner requested and received a hearing before an administrative law judge (ALJ), including a supplemental hearing after Congress amended the Social Security Act to address alcohol and drug use in 1996. Pet. App. No. A-4, at 2-3.

The hearing testimony established that petitioner was 54 years old and had the equivalent of a high school education. Petitioner had not worked outside of the home since 1988. However, she did housework for herself and for her mother. Petitioner testified that she had a spastic colon and problems keeping down food. Petitioner also testified that she was forgetful and panicked in stressful situations. Petitioner had abused alcohol and prescription drugs for many years, but she testified that she stopped drinking in 1993 and stopped abusing drugs in 1992, when she started methadone treatment. Petitioner testified that she was taking methadone and had no side effects from the treatment. Pet. App. No. A-4, at 3. A vocational expert testified that a person who was capable of light work and had impairments of the type described by petitioner could

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[2] Petitioner died in October 1999. Pet. App. No. A-4, at 2 n.6. Petitioner's mother, as next-of-kin, is entitled to any potential SSDI disability benefits due to petitioner through September 1999. See 42 U.S.C. 404(d)(3). Petitioner's claim for unpaid SSI benefits did not survive her death. See 42 U.S.C. 1383(b)(1)(A).

find jobs in service industries such as laundry and cleaning, provided that the impairments were only of moderate severity. *Id.* at 3-4.

Medical evidence indicated that petitioner had a history of drug and alcohol abuse and dependence and also intermittent treatment for various physical conditions. Pet. App. No. A-4, at 4-6. Several doctors diagnosed petitioner as having a drug dependency and being a drug abuser. *Id.* at 4-5. In addition, petitioner suffered from arthritis, a spastic colon, migraine headaches, and a probable history of esophageal spasm and/or esophageal ring. *Id.* at 5. One psychiatrist, who examined petitioner in 1997, diagnosed her as having major depression with anxiety, but concluded that she "would have no difficulty making acceptable work decisions." *Id.* at 6.

The ALJ found that petitioner's drug abuse was a disabling condition, but that she was ineligible for benefits due to the 1996 amendments. Pet. App. No. A-1, at 12-13. The ALJ concluded that absent petitioner's drug abuse, she could perform a significant number of jobs. Therefore, the ALJ determined that petitioner was not eligible for benefits. *Ibid.*

The Appeals Council denied petitioner's request for review of the ALJ's decision. Pet. App. No. A-2.

3. The district court affirmed the ALJ's decision. Pet. App. No. A-3. The district court concluded that petitioner was taking methadone to control her dependence on prescription drugs. *Id.* at 18. In light of petitioner's continued need for methadone, the district court held, the ALJ properly found that petitioner was still dependent on prescription drugs. *Ibid.* The court also found that the record supported the ALJ's conclusion that petitioner's depression was related to drug abuse and was not a separate severe impairment. *Id.* at

18-20. Finally, the court concluded that the ALJ properly found that there existed a significant number of jobs that petitioner could do in the absence of her substance abuse. *Id.* at 20-21.

4. The court of appeals affirmed. Pet. App. No. A-4. The court rejected petitioner's claim that, because she had stopped using prescription drugs and alcohol, the 1996 amendments concerning alcohol and drug use did not apply to her case. It found that petitioner's doctors "prescribed methadone *as treatment* for her prescription drug abuse," and that "prescription drug abuse necessitated her methadone treatment." *Id.* at 9. Benefits therefore were properly denied, the court concluded, because petitioner's prescription drug abuse was "a 'contributing factor material' to the determination that she was unable to work." *Ibid.* (quoting 42 U.S.C. 423(d)(2)(C) (Supp. V 1999)).

The court of appeals also upheld, as supported by substantial record evidence, the ALJ's finding that petitioner's depression and anxiety did not independently render her disabled. Pet. App. No. A-4, at 10. Finally, the court of appeals held that the ALJ did not err in failing to find that petitioner was disabled by virtue of the combination of her age, mental conditions, and lack of work history. *Id.* at 10-13.

ARGUMENT

1. Petitioner claims (Pet. 7-10, 14-15) that the court of appeals erred by "finding that methadone addiction in the course of prescribed treatment constitutes drug and alcohol abuse" (Pet. 14) for purposes of applying the Social Security Act's restriction on disability benefits. The court of appeals, however, made no such finding. It instead made clear that petitioner took methadone "*as treatment* for her prescription drug abuse," and that

the addiction that disqualified petitioner from disability benefits (for the period before she started taking methadone in 1992 as well as the period after she began treatment) was an addiction to prescription drugs. Pet. App. No. A-4, at 9 & n.5. The court of appeals' ruling is consistent with the 1996 amendments, and with SSA regulations that identify methadone treatment as an acceptable form of substitution therapy. See Pet. 10 (citing 20 C.F.R. 416.937(c)).[3]

For the foregoing reasons, the court of appeals' decision does not implicate the question presented by petitioner—"whether methadone addiction in the course of prescribed treatment properly falls under the ambit of drug and alcohol abuse" under the 1996 amendments. Pet. i. Petitioner, moreover, has not suggested that the decision in this case conflicts with any decision of another court of appeals or of this Court. Accordingly, and because the court of appeals' opinion is unpublished, further review by this Court is unwarranted.

2. Although the petition should be denied, we note that footnote 5 of the court of appeals' decision (Pet. App. No. A-4, at 9 n.5) suggests that the court of appeals may have had an incorrect understanding of the ALJ's decision. The ALJ did not hold that petitioner's methadone treatment contributed to her disability after 1992. As the court of appeals noted, petitioner testified that she had no side effects from Methadone. *Id.* at 3. And the ALJ referred to petitioner's methadone use as

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[3] Also contrary to petitioner's assertion (Pet. 11), the court of appeals did not rely on the assumption that petitioner would revert to prescription drug and alcohol abuse if she stopped methadone treatment. The court of appeals expressly did not consider that theory. Pet. App. No. A-4, at 13 n.6.

"treatment" that established the ongoing nature of her impairing drug "abuse/dependence," not as an impairment in its own right that prevented her from working. See Pet. App. No. A-1, at 8, 9; see also Pet. App. No. A-3, at 18 ("Methadone is the medication used to control plaintiff's drug abuse/dependence.").

The ALJ's decision does not clearly state whether, when her drug addiction is considered, petitioner was able to work after she began methadone treatment in 1992. The ALJ did find, however, that to the extent petitioner was unable to work at any time during the period between January 1, 1988 (the first date for which she claimed benefits) and June 28, 1997 (the date of the ALJ's decision), it was because of her drug abuse or drug dependence. See Pet. App. No. A-1, at 9 ("[H]er impairments, other than her drug abuse/dependence, when considered in combination, do not prevent her from performing work."); *id.* at 10 (same). Since petitioner's use of methadone was a treatment that had no side effects, Pet. App. A-4, at 3, any inability to perform work (either before or after petitioner began taking methadone) was attributable to her underlying drug addiction, and thus could not qualify as a disability under the 1996 amendments. See 42 U.S.C. 423(d)(2)(C), 1382c(a)(3)(J) (Supp. V 1999).

3. Petitioner argues (Pet. 12-13) that she was disabled even without consideration of her drug addiction. That issue is not included within the question on which petitioner seeks a writ of certiorari. See Pet. i. Furthermore, the ALJ's fact-bound determination that, aside from her addiction, petitioner was able to work—a determination that the court of appeals upheld (Pet. App. No. A-4, at 10-13)—turns entirely on the administrative record generated before the SSA and presents no issue warranting review by this Court.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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JULY 2001